

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

*****05 10054 EFH*****

WILLIAM IRVING,
Plaintiff

v.

7-ELEVEN, INC., and THE
SOUTHLAND CORPORATION,
Defendants

C. A. No.

MAGISTRATE JUDGE RBC

RECEIPT # 61325
AMOUNT \$ 150
SUMMONS ISSUED YES
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. FOW
DATE 1/10/05

COMPLAINT

JURISDICTION

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1332, in that plaintiff, WILLIAM IRVING, is a citizen of the Commonwealth of Massachusetts, the defendants, 7-ELEVEN, INC., and THE SOUTHLAND CORPORATION, are each citizens of the State of Texas, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2. The Court has jurisdiction over the defendant 7-ELEVEN, INC. under Massachusetts General Laws, Chapter 223A, §3(a),(b) & (c), in that the defendant, at all relevant times, transacted business, contracted to supply services, and caused tortious injury by acts and omissions, in the Commonwealth of Massachusetts.

3. The Court also has jurisdiction over the defendant, THE SOUTHLAND CORPORATION, under Massachusetts General Laws, Chapter 223A, §3(e), in that this defendant, at all relevant times, had an interest in, used, and possessed real property in the Commonwealth of Massachusetts.

PARTIES

4. The plaintiff, WILLIAM IRVING ("WILLIAM"), is a citizen of the Commonwealth of Massachusetts, with an usual place of residence at 20 Hemlock Lane, Bedford, Massachusetts.

5. The defendant, 7-ELEVEN, INC. ("7-ELEVEN"), is a citizen of the State of Texas, being a corporation duly organized under its laws, and having its principal place of business at 2711 North Haskell Avenue, Dallas, Texas.

6. The defendant, THE SOUTHLAND CORPORATION ("SOUTHLAND") is a citizen of Texas, being a corporation duly organized under its laws, and having its principal place of business at 2711 North Haskell Avenue, Dallas, Texas.

STATEMENT OF FACTS

7. At all times relevant to this action, the defendant SOUTHLAND was the owner of a Seven Eleven Convenience Store located at 826 Boston Road, Billerica, Massachusetts ("The Store").

8. At all times relevant to this action, the defendant 7-ELEVEN was responsible for the operation, supervision, control and management of the store.

9. At all times relevant to this action, plaintiff WILLIAM was lawfully in the parking lot of the store, as a customer of The Store.

10. On or about January 13, 2002, the plaintiff, WILLIAM, while lawfully on the premises as a potential customer, slipped and fell upon a walkway leading to the store, owned, operated, controlled, managed and maintained by the defendants 7-ELEVEN and SOUTHLAND.

11. The plaintiff, WILLIAM, slipped and fell because of an unnatural

accumulation of rain, ice and snow, which was present in said condition for a sufficient length of time so that it should have been seen by the defendants.

12. As a direct and proximate result of the defendants' negligence, the premises were in a dangerous and unsafe condition, causing the plaintiff, WILLIAM, while he was in the exercise of due care, to fall and to suffer permanent injuries.

13. The defendants were under a duty to operate, control, manage and maintain the premises in a safe condition for business invitees and to make reasonable inspection of said premises to discover conditions presenting dangers to said invitees.

14. WILLIAM's injuries were a direct result of the failure of the defendants, their agents and employees, to maintain the parking lot and sidewalk around the store in a safe and proper condition.

15. The defendants failed to protect persons lawfully on the premises outside the store from reasonably foreseeable harm as a result of the condition of the sidewalk and parking lot.

16. The defendants knew, or in the exercise of reasonable care should have known, about the condition of the area outside the store prior to this accident.

17. The defendants breached said duty of care by failing to maintain the premises in a safe condition and by failing to make reasonable inspections to discover those dangers which they knew or should have known to exist on said premises.

18. The defendants failed to warn the plaintiff of this danger.

19. As a direct and proximate result of the defendants 7-ELEVEN and SOUTHLAND's negligence, the plaintiff, WILLIAM, was caused to fall and was grievously injured, suffered great pain of body and anguish of mind, and incurred expenses for

medical treatment and care.

20. As a result of the defendants' negligence, plaintiff WILLIAM was seriously and permanently injured, and he continues to suffer at present from his injuries, which affect all aspects of his life.

21. The plaintiff gave proper and timely notice to the defendants of his injuries as required by Massachusetts General Laws, Chapter 84, §§17 - 21.

CLAIMS FOR RELIEF

FIRST CLAIM

22. Plaintiffs reallege paragraphs 1 through 21.

23. As a direct and proximate result of the defendant 7-ELEVEN, INC.'s negligence, the plaintiff, WILLIAM IRVING, was caused to fall and was grievously injured, suffered great pain of body and anguish of mind, and incurred expenses for medical treatment and care.

SECOND CLAIM

18. Plaintiffs reallege paragraphs 1 through 21.

19. As a direct and proximate result of the defendant THE SOUTHLAND CORPORATION's negligence, the plaintiff, WILLIAM IRVING, was caused to fall and was grievously injured, suffered great pain of body and anguish of mind, and incurred expenses for medical treatment and care.

RELIEF REQUESTED

WHEREFORE, the plaintiff, WILLIAM IRVING demands judgment against the defendants as follows:


A. On the First Claim, against defendant 7-ELEVEN, Inc., for the injuries

sustained, and the pain and suffering endured, by the plaintiff, WILLIAM IRVING, in an amount which is fair, just and adequate for the injuries sustained, plus interest and costs.

B. On the Second Claim, against defendant, THE SOUTHLAND CORPORATION, for the injuries sustained, and the pain and suffering endured, by the plaintiff, WILLIAM IRVING, in an amount which is fair, just and adequate for the injuries sustained, plus interest and costs.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL CLAIMS.

By their Attorney,

A handwritten signature in black ink, appearing to read 'Carmen L. Dursio', written over a horizontal line.

CARMEN L. DURSO, ESQUIRE
B.B.O. # 139340
100 Summer Street, Suite 3232
Boston, MA 02110-2104
617-728-9123
January 6, 2005

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

IRVING, WILLIAM

DEFENDANTS

7-ELEVEN, INC. and THE SOUTHLAND CORPORATION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF MIDDLESEX
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT N/A
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

CARMEN L. DURSO, ESQUIRE, BBO # 139340

100 SUMMER STREET, BOSTON, MA 02110-2104

617-728-9123 dursolaw@tiac.net

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|---|--|---|--|---|
| Citizen of This State | PTF DEF | <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF DEF | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 | |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. 1332, DIVERSITY. CIVIL ACTION FOR PERSONAL INJURIES

AS THE RESULT OF A FALL ON DEFENDANTS' PROPERTY.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal <input type="checkbox"/> 423 Withdrawal PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395H) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
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VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
01/07/05

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) WILLIAM IRVING v. 7-ELEVEN, INC.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
N/A
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
NO
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? NO
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) N/A
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? NO
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES NO OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES NO
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES NO (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? EASTERN
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION N/A OR WESTERN SECTION _____

(PLEASE TYPE OR PRINT)
ATTORNEY'S NAME CARMEN L. DURSO, ESQUIRE

ADDRESS 100 SUMMER STREET, BOSTON, MA 02110-2104

TELEPHONE NO. 617-728-9123 / dursolaw@tiac.net